

11-2017

## Measuring Justice in State Courts: The Demographics of the State Judiciary

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### Recommended Citation

Tracey E. George and Albert H. Yoon, Measuring Justice in State Courts: The Demographics of the State Judiciary, 70 *Vanderbilt Law Review* 1887 (2017)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol70/iss6/10>

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# Measuring Justice in State Courts: The Demographics of the State Judiciary

Tracey E. George\*  
Albert H. Yoon\*\*

*For most individuals and organizations, state courts—especially state trial courts—are the “law” for all effective purposes. State courts are America’s courts. But, we know surprisingly little about state court judges despite their central and powerful role in lawmaking and dispute resolution. This lack of information is especially significant because judges’ backgrounds have important implications for the work of courts. The characteristics of those who sit in judgment affect the internal workings of courts as well as the external perception of those courts and judges. The background of judges will influence how they make decisions and can impact the public’s acceptance of those decisions. We aim to address this knowledge gap by collecting demographics on state judges in every state. We discovered, however, that the task is extraordinarily difficult due to many factors, including a lack of transparency and an abundant complexity in our state court systems. In this Article, we describe and evaluate the difficulty of studying state courts and the importance of continued efforts to do so. We explain a variety of methods to overcome some of the research challenges. We then lay out our findings on state court demographics. The process and outcome of our project can*

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\*\* Professor and Chair in Law and Economics; Professor of Political Science. The authors thank former and current *Vanderbilt Law Review* leaders, Emory law professors Michael Kang and Joanna Shepherd, and American Constitution Society Senior Counsel for Strategic Engagement David Lyle for collaborating with us on this Symposium. The Symposium’s distinctive two-stage structure—a brainstorming session of scholars and law review students in the fall of 2016 at Emory and a paper-driven discussion in the spring of 2017 at Vanderbilt—was possible only because of the collegiality and commitment of the group. We also thank the American Constitution Society for providing financial support for the Symposium and for the research on which this Article is based. Finally, we were fortunate to work with an outstanding team of research assistants: Timo Vink and Elizabeth White at the University of Toronto and David Adams, Cyle Catlett, Tracee Clements, Connor Crum, David Creasy, Julia Gillespie, Dan Metzger, and Erik Peterson at Vanderbilt University.

*inform study of the judiciary and its place in our political system. We hope too they will encourage and facilitate future empirical study of state courts.*

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## INTRODUCTION

The selection of a new U.S. Supreme Court Justice was a central issue in the 2016 presidential election.<sup>1</sup> Justice Antonin Scalia died unexpectedly on February 13, 2016.<sup>2</sup> President Barack Obama

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1. See, e.g., ABC News Analysis Desk & Paul Blake, *Election 2016 National Exit Poll Results and Analysis*, ABC NEWS (Nov. 9, 2016, 2:10 AM), <http://abcnews.go.com/Politics/election-2016-national-exit-poll-results-analysis/story?id=43368675> [<https://perma.cc/NE62-V8NW>] (reporting that 21% of voters named U.S. Supreme Court appointments as “the most important factor” in their choice of president in the 2016 election); Nina Totenberg, *The Supreme Court: A Winning Issue in the Presidential Campaign?*, NPR (Sept. 29, 2016, 4:53 PM), <http://www.npr.org/2016/09/29/495960902/the-supreme-court-a-winning-issue-in-the-presidential-campaign> [<https://perma.cc/BB9Z-FU78>] (noting the controversy over the refusal to confirm Merrick Garland and opining that the outcome of the presidential election could significantly impact the political leaning of the Supreme Court).

2. See, e.g., Eva Ruth Moravec, Sari Horwitz & Jerry Markon, *The Death of Antonin Scalia: Chaos, Confusion and Conflicting Reports*, WASH. POST (Feb. 14, 2016), [https://www.washingtonpost.com/politics/texas-tv-station-scalia-died-of-a-heart-attack/2016/02/14/938e2170-d332-11e5-9823-02b905009f99\\_story.html?utm\\_term=.450100ebc2c9](https://www.washingtonpost.com/politics/texas-tv-station-scalia-died-of-a-heart-attack/2016/02/14/938e2170-d332-11e5-9823-02b905009f99_story.html?utm_term=.450100ebc2c9) [<https://perma.cc/QHV4-LHSQ>] (describing the circumstances of Scalia’s death); see also Press Release, Supreme Court of the United States, Statements from the Supreme Court Regarding the Death of Justice Antonin Scalia (Feb. 15,

nominated U.S. Court of Appeals for the D.C. Circuit Judge Merrick Garland to succeed Scalia.<sup>3</sup> The Republican-controlled Senate, however, refused to consider nominee Garland because Obama was in his last year as president.<sup>4</sup> Although unprecedented and controversial,<sup>5</sup> the Republican Senate leadership's decision is logical. In an appointment system with nomination and confirmation, the nominator controls the agenda. A different nominator will present different options to the confirming body. The country saw this play out. President Donald Trump's eventual nominee, Tenth Circuit Judge Neil Gorsuch, had a much different judicial record than Garland.<sup>6</sup>

Any process of selection will inevitably have an impact on *who* is selected.<sup>7</sup> The fifty-two judicial systems in the United States use a

2016), [https://www.supremecourt.gov/publicinfo/press/pressreleases/pr\\_02-14-16](https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_02-14-16) [<https://perma.cc/ZZT8-PGU7>] (providing the Supreme Court Justices' reaction to Scalia's death).

3. See, e.g., Remarks on the Nomination of Merrick B. Garland to Be a United States Supreme Court Associate Justice, 2016 DAILY COMP. PRES. DOC. 154 (Mar. 16, 2016), <https://www.gpo.gov/fdsys/pkg/DCPD-201600154/pdf/DCPD-201600154.pdf> [<https://perma.cc/T5XQ-RTJ6>] (introducing Garland and asserting that he should be given a fair hearing by the Senate); Matt Ford, *The Supreme Court Confirmation Battle Begins*, ATLANTIC (Mar. 16, 2016, 11:54 AM), <https://www.theatlantic.com/politics/archive/2016/03/obama-supreme-court-nominee/473784/> [<https://perma.cc/R2C6-3G3N>] (summarizing Garland's credentials and describing the challenge Garland would face to be confirmed).

4. See, e.g., Totenberg, *supra* note 1.

5. See *A Crippled Supreme Court's New Term*, N.Y. TIMES (Oct. 3, 2016), <https://www.nytimes.com/2016/10/03/opinion/a-crippled-supreme-courts-new-term.html> [<https://perma.cc/U3EV-U2D5>] (disapproving of the Senate's refusal to confirm Garland and describing the negative impact that the vacancy has had on the Supreme Court); Linda Greenhouse, *The Broken Supreme Court*, N.Y. TIMES (Apr. 13, 2017), <https://www.nytimes.com/2017/04/13/opinion/the-broken-supreme-court.html> [<https://perma.cc/GA2F-KRDZ>] (opining that the legitimacy of the Supreme Court has been threatened by the unorthodox and overly politicized way in which Scalia's vacancy was filled).

6. Compare ANDREW NOLAN ET AL., CONG. RESEARCH SERV., R44778, JUDGE NEIL M. GORSUCH: HIS JURISPRUDENCE AND POTENTIAL IMPACT ON THE SUPREME COURT (2017), <https://fas.org/sgp/crs/misc/R44778.pdf> [<https://perma.cc/2EFK-LCZ3>] (examining Gorsuch's views on fourteen different areas of law and noting that his jurisprudence demonstrates many similarities with Scalia's approach to these issues), with ANDREW NOLAN ET AL., CONG. RESEARCH SERV., R44479, JUDGE MERRICK GARLAND: HIS JURISPRUDENCE AND POTENTIAL IMPACT ON THE SUPREME COURT (2016), <https://fas.org/sgp/crs/misc/R44479.pdf> [<https://perma.cc/3PF6-YESV>] (reviewing Garland's views on fourteen different areas of law and pointing out several differences from Scalia's judicial approach). See also Adam Liptak, *A Polarized Supreme Court, Growing More So*, N.Y. TIMES (Apr. 9, 2017), <https://www.nytimes.com/2017/04/09/us/politics/gorsuch-supreme-court.html> [<https://perma.cc/S2GY-4MEX>] (noting the ideological differences between Gorsuch and Garland and highlighting their differing views on the administrative state).

7. The empirical literature demonstrating the impact of selection method, including who chooses and in what context, is extensive. See, e.g., LEE EPSTEIN & JEFFREY A. SEGAL, *ADVICE AND CONSENT: THE POLITICS OF JUDICIAL APPOINTMENTS* (2005); GREG GOELZHAUSER, *CHOOSING STATE SUPREME COURT JUSTICES: MERIT SELECTION AND THE CONSEQUENCES OF INSTITUTIONAL REFORM* (2016); SHELDON GOLDMAN, *PICKING FEDERAL JUDGES: LOWER COURT SELECTION FROM ROOSEVELT THROUGH REAGAN* (1997).

wide variety of processes to choose their principal judges.<sup>8</sup> The federal judicial system uses two methods of selection: the familiar Article III presidential nomination and Senate confirmation process,<sup>9</sup> and the less familiar Article I administrative process.<sup>10</sup> Each state has a distinct selection process for its judicial system.<sup>11</sup> A state judge may first gain a seat through election (nonpartisan or partisan), appointment by an elected branch (governor and/or legislature), or recommendation by a merit commission. Because few state judges enjoy life tenure, most face some form of election, either a retention election (with an up-or-down vote) or a contested election, to keep their seats.<sup>12</sup>

Judicial selection's effects extend beyond who is chosen to who even considers becoming a candidate. Federal judges and judicial nominees have complained of the discouraging effects of the slow and sometimes demeaning gauntlet to confirmation.<sup>13</sup> They may drop out or not even make themselves available as a prospective nominee. State judges often face elections to be selected for, or at least to retain, a seat. State judges express concern that the path to the bench via the ballot box dissuades promising candidates, especially women and minorities, from seeking judicial office and has negative effects on those that do.<sup>14</sup>

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8. For a rich and thoughtful history of the evolution in state judicial selection systems, see JED HANDELSMAN SHUGERMAN, *THE PEOPLE'S COURTS: PURSUING JUDICIAL INDEPENDENCE IN AMERICA* (2012).

9. See U.S. CONST. art. II, § 2 (“[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court, and all other Officers of the United States . . .”).

10. See Bankruptcy Reform Act of 1978, 28 U.S.C. § 152 (2012) (providing for appointment of bankruptcy judges to particular judicial districts after considering the Judicial Conference's recommendations); Federal Magistrates Act of 1968, 28 U.S.C. § 631 (2012) (allowing for appointment of magistrate judges by district court judges and setting forth requirements for appointees).

11. See Inst. for the Advancement of the Am. Legal Sys., *Selection & Retention of State Judges: Methods from Across the Country*, UNIV. DENVER (2017), [http://iaals.du.edu/sites/default/files/documents/publications/selection\\_and\\_retention\\_of\\_state\\_judges\\_charts.pdf](http://iaals.du.edu/sites/default/files/documents/publications/selection_and_retention_of_state_judges_charts.pdf) [<https://perma.cc/CH82-8SA5>] [hereinafter IAALS Study] (detailing the selection methods for selecting and retaining judges for all fifty states). The interstate variation is sufficient to justify and support an interactive website that allows the user to select a state and then look at selection at each level and for each type of court. See *Judicial Selection in the States*, NAT'L CTR. FOR ST. CTS., <http://www.judicialselection.us> (last visited Sept. 15, 2017) [<https://perma.cc/AJ6W-WS9F>].

12. Massachusetts, New Hampshire, and Rhode Island judges have lifetime appointments. IAALS Study, *supra* note 11, at 9.

13. See, e.g., Michael Gerhardt & Richard Painter, “Extraordinary Circumstances”: *The Legacy of the Gang of 14 and a Proposal for Judicial Nominations Reform*, 46 U. RICH. L. REV. 969 (2012) (looking at the use of the filibuster during judicial confirmations and proposing self-regulation of this political maneuver in the future); Sheldon Goldman, Elliot Slotnick & Sara Schiavoni, *Obama's Judiciary at Midterm: The Confirmation Drama Continues*, 94 JUDICATURE 262 (2011) (examining Obama's nominations and appointments to the Supreme Court at midterm, and discussing particular difficulties faced as well as potential missteps made in the process).

14. See, e.g., CHARLES H. SHELDON & LINDA S. MAULE, *CHOOSING JUSTICE: THE RECRUITMENT OF STATE AND FEDERAL JUDGES* (1997) (considering how judges balance

The work of courts as well as the public's view of courts and their legitimacy are affected by *who* serves. The idea that judicial decisions and their reception are affected by the identity of the person making the decision is entirely intuitive and empirically well established.<sup>15</sup> Thus, we need to know the demographics of the bench to understand the dynamics of the judicial process, to evaluate the means of choosing judges, and to analyze the role of the judiciary in the larger political system.<sup>16</sup> Judicial biographies are important.

The U.S. Supreme Court is undoubtedly the most visible and well-known court in America. Countless scholarly and popular works have been published on the Court and the individual Justices who have served on it.<sup>17</sup> We can read colorful and extensive stories about their lives: their upbringing, common or idiosyncratic habits, changing worldviews, and life-altering experiences.<sup>18</sup> We can access detailed databases of their backgrounds, attributes, and work.<sup>19</sup> We can even track down the gravesite for each Justice (only the dead ones, of

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accountability to voters with judicial integrity and examining why some judges are more affected by political influence than others); Sue Bell Cobb, *I Was Alabama's Top Judge. I'm Ashamed by What I Had to Do to Get There: How Money Is Ruining America's Courts*, POLITICO MAG., Mar./Apr. 2015, <http://www.politico.com/magazine/story/2015/03/judicial-elections-fundraising-115503> [<https://perma.cc/C559-A44B>] (disapproving of the system of collecting donations and running political ads in order to secure a judgeship).

15. See, e.g., JAMES L. GIBSON & GREGORY A. CALDEIRA, *CITIZENS, COURTS, AND CONFIRMATIONS: POSITIVITY THEORY AND THE JUDGMENTS OF THE AMERICAN PEOPLE* (2009) (examining the public's impression of the Supreme Court in the context of the nomination and appointment of Justice Alito); Tracey E. George & Taylor Grace Weaver, *The Role of Personal Attributes and Social Backgrounds on Judging*, in *THE OXFORD HANDBOOK OF U.S. JUDICIAL BEHAVIOR* 286 (Lee Epstein & Stefanie Lindquist eds., 2017) (evaluating social background theory, which suggests that judges' rulings are influenced by their personal experiences).

16. See, e.g., SUSAN B. HAIRE & LAURA P. MOYER, *DIVERSITY MATTERS: JUDICIAL POLICY MAKING IN THE U.S. COURTS OF APPEALS* (2015) (positing that judges' personal characteristics influence their rulings, and exploring the impact of diversity on both the U.S. Courts of Appeals and the judicial process as a whole); SALLY J. KENNEY, *GENDER AND JUSTICE: WHY WOMEN IN THE JUDICIARY REALLY MATTER* (2013) (considering the importance of gender studies in the judiciary and political sphere and advocating for the appointment of female and feminist judges).

17. See, e.g., *THE SUPREME COURT JUSTICES: ILLUSTRATED BIOGRAPHIES, 1789–2012* (Clare Cushman ed., 3d ed. 2013); BOB WOODWARD & SCOTT ARMSTRONG, *THE BRETHERN: INSIDE THE SUPREME COURT* (1979). For a more humorous approach to judicial biography, see DOUG MAYER, ANDY MAYER & JIM BECKER, *THE SUPREME COURT: A PAPER DOLL BOOK* (1993).

18. See, e.g., LINDA GREENHOUSE, *BECOMING JUSTICE BLACKMUN: HARRY BLACKMUN'S SUPREME COURT JOURNEY* (2005); DENNIS J. HUTCHINSON, *THE MAN WHO ONCE WAS WHIZZER WHITE: A PORTRAIT OF JUSTICE BYRON R. WHITE* (1998); JOHN C. JEFFRIES, JR., *JUSTICE LEWIS F. POWELL, JR.: A BIOGRAPHY* (2d ed. 2001); LAURA KALMAN, *ABE FORTAS: A BIOGRAPHY* (1990); BERNARD SCHWARTZ, *SUPER CHIEF: EARL WARREN AND HIS SUPREME COURT—A JUDICIAL BIOGRAPHY* (1983).

19. See, e.g., LEE EPSTEIN, JEFFREY A. SEGAL, HAROLD J. SPAETH & THOMAS G. WALKER, *THE SUPREME COURT COMPENDIUM: DATA, DECISIONS AND DEVELOPMENTS* 293–550 (6th ed. 2015); SUP. CT. DATABASE, <http://supremecourtdatabase.org> (last visited Sept. 16, 2017) [<https://perma.cc/3DQN-8RTC>].

course).<sup>20</sup> Even the relatively unimportant Justices have received lavish attention.<sup>21</sup> Supreme Court Justices' lives lay open for us. Yet, the Supreme Court, while important, has limited reach. The Court decides fewer than one hundred cases per year.<sup>22</sup> Moreover, it addresses only questions of federal law. While we often hear a person say that she will take her case "all the way to the Supreme Court," the reality is that the Justices decide few cases and only a subset of legal issues.

Although the Supreme Court is the top of the federal judicial hierarchy, lower federal courts are the final word for nearly every dispute. Plaintiffs and federal prosecutors brought more than 369,208 cases to U.S. district courts in the fiscal year ending September 30, 2016.<sup>23</sup> And, 805,580 bankruptcy petitions were filed with U.S. bankruptcy courts.<sup>24</sup> Adding a smattering of other categories of cases, more than 1.5 million matters were brought to entry-level courts in the federal judiciary between October 2015 and September 2016. Losing parties filed appeals to the U.S. courts of appeals in about 60,000 cases.<sup>25</sup>

Famous jurists like Second Circuit Judge Learned Hand aside, we know much less about the personal narratives of lower court judges than we do about Justices, notwithstanding the central role of lower federal courts in federal law.<sup>26</sup> Fortunately, the Federal Judicial Center ("FJC"), the research arm of the federal judicial branch, does maintain

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20. See, e.g., George A. Christensen, *Here Lies the Supreme Court: Revisited*, 33 J. SUP. CT. HIST. 17, 25–30 (2008) (providing the graveyard names and addresses for deceased Supreme Court Justices).

21. See, e.g., James W. Ely, Jr., *Rufus W. Peckham and Economic Liberty*, 62 VAND. L. REV. 591 (2009) (describing in detail Justice Peckham's professional background, professional career, and judicial legacy). For an argument that there are no unimportant Justices, see David N. Atkinson, *Minor Supreme Court Justices: Their Characteristics and Importance*, 3 FLA. ST. U. L. REV. 348, 348 (2014) (arguing that even the minor Justices who leave "no special imprint on the public mind . . . are nonetheless worthy of intensive study").

22. *Supreme Court of the United States—Cases on Docket, Disposed of, and Remaining on Docket*, U.S. CTS. tbl.A-1, [http://www.uscourts.gov/sites/default/files/supcourt\\_a1\\_0930.2016.pdf](http://www.uscourts.gov/sites/default/files/supcourt_a1_0930.2016.pdf) (last visited Sept. 16, 2017) [<https://perma.cc/24MM-Z5Y6>] (reporting that the Court annually heard oral arguments in 75 to 82 cases in October Terms 2011–2015).

23. *U.S. District Courts—Judicial Business 2016*, U.S. CTS., <http://www.uscourts.gov/statistics-reports/us-district-courts-judicial-business-2016> (last visited Sept. 16, 2017) [<https://perma.cc/W7TB-QREE>].

24. *U.S. Bankruptcy Courts—Judicial Business 2016*, U.S. CTS. tbl.6, <http://www.uscourts.gov/statistics-reports/us-bankruptcy-courts-judicial-business-2016> (last visited Sept. 16, 2017) [<https://perma.cc/ZX46-2J43>].

25. *U.S. Courts of Appeals—Judicial Business 2016*, U.S. CTS. tbl.1, <http://www.uscourts.gov/statistics-reports/us-courts-appeals-judicial-business-2016> (last visited Sept. 16, 2017) [<https://perma.cc/5CUP-WJDJ>].

26. For noteworthy exceptions to the sparse record on lower federal court judges, see DAVID M. DORSEN, HENRY FRIENDLY, GREATEST JUDGE OF HIS ERA (2012); GERALD GUNTHER, LEARNED HAND: THE MAN AND THE JUDGE (2d ed. 2011).

a database of demographic variables of Article III judges.<sup>27</sup> Though it lacks the richness of the many biographical portraits of the Justices, the FJC database is detailed and complete with respect to every judge who has served in an Article III position. (Unfortunately, the FJC lacks comparable data for Article I judges such as bankruptcy judges and magistrate judges.<sup>28</sup>)

State courts resolve nearly every dispute that is brought to the judicial system, yet we lack comprehensive and reliable information on state judges. For most people, state courts are where they can seek redress of an injury, assistance with a problem, or the right to defend against an accusation. Although state judges are public servants, little is known about them. Unlike their counterparts on the federal courts, much of the information on state judges is nonpublic and, in many instances, not even collected in a systematic way. Given the large number of state judges, we would not expect rich histories in monographic form as we see for so many Supreme Court Justices.<sup>29</sup> But there also is not a reliable research database of state judges. Instead, there is an assortment of commercial and nonprofit print and online resources for trying to track down information on judges. These sources, we found, are uneven. Some are quite promising. Others are riddled with errors. None is comprehensive or suitable for robust empirical scholarship.

In order to address this serious shortcoming in our understanding of America's courts, we have constructed an unprecedented database of state judicial biographies. Our dataset—the State Bench Biographical Database—includes more than ten thousand current sitting judges on state courts of general jurisdiction. This study is based on the work of a team of independent researchers at Vanderbilt University and the University of Toronto. With financial support from the American Constitution Society, the researchers collected and coded biographical data on over ten thousand judges serving on state supreme courts, state intermediate appellate courts, and state general jurisdiction trial courts. Using the State Bench Biographical Database, we examine the gender, racial, and ethnic composition of state courts.

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27. *Biographical Directory of Article III Federal Judges, 1789-Present*, FED. JUD. CTR., <https://www.fjc.gov/history/judges> (last visited Sept. 16, 2017) [<https://perma.cc/TT4F-5ZCZ>]; *Biographical Directory of Article III Federal Judges: Export*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/biographical-directory-article-iii-federal-judges-export> (last visited Sept. 16, 2017) [<https://perma.cc/4BR9-ULE3>].

28. Cf. Tracey E. George & Albert H. Yoon, *Article I Judges in an Article III World: The Career Path of Magistrate Judges*, 16 NEV. L.J. 823, 836–43 (2016) (presenting data on magistrate judges).

29. The exceptions to this statement prove the rule, as they say. See, e.g., BEN FIELD, *ACTIVISM IN PURSUIT OF THE PUBLIC INTEREST: THE JURISPRUDENCE OF CHIEF JUSTICE ROGER J. TRAYNOR* (2003).



We then compare the composition of state courts to the composition of the general population in each state. We find that courts are not representative of the people whom they serve—that is, a gap exists between the bench and the citizens.

Our Article proceeds as follows. We begin in Part I with an explanation for why empirical research on state courts and judges is important. Part I offers an overview of the workload, structure, and selection methods of state courts. In Part II, we describe our method for tackling the challenges to studying the demographics of state judiciaries. Part III presents our results. We conclude by considering the implications of our project for research in this area.

### I. THE IMPORTANCE OF EMPIRICAL RESEARCH ON STATE COURTS

The current Symposium issue is dedicated to empirical research on state courts. State courts are an important area of quantitative study for several reasons. First, they are the principal source of judicial decisionmaking in the United States. State judges are America's judges. Second, state courts afford invaluable opportunities to test the effects of institutional design on judicial decisionmaking because of the tremendous diversity in state court systems.<sup>30</sup> Third, state courts reveal a great deal about the work of lawyers and the impact of law on the microlevel.<sup>31</sup> They tell us more than federal courts, even U.S. district courts, about what is happening locally in the law. Finally, state courts are the most important protector of individual rights and liberties because of their caseloads, their presence, and their availability.<sup>32</sup> As we discuss in this Section, their central role combined with interstate and intrastate variation in institutional design makes state courts an incredibly rich and important focus for scholarly attention.

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30. See, e.g., Paul Brace & Melinda Gann Hall, *Studying Courts Comparatively: The View from the American States*, 48 POL. RES. Q. 5, 21–25 (1995) (analyzing the impact of institutional design on judicial decisionmaking across eight states); Gbemende Johnson, *Executive Power and Judicial Deference: Judicial Decision Making on Executive Power Challenges in the American States*, 68 POL. RES. Q. 128, 130 (2015) (explaining the value of comparative study of state courts to answer research questions about courts).

31. See, e.g., KARL N. LLEWELLYN, *THE COMMON LAW TRADITION: DECIDING APPEALS* 236–56 (1960); Lawrence M. Friedman & Robert V. Percival, *A Tale of Two Courts: Litigation in Alameda and San Benito Counties*, 10 LAW & SOC'Y REV. 267, 299–300 (1976).

32. See, e.g., Robert A. Kagan, Bliss Cartwright, Lawrence M. Friedman & Stanton Wheeler, *The Business of State Supreme Courts, 1870-1970*, 30 STAN. L. REV. 121, 121 (1977); Robert A. Kagan, Bliss Cartwright, Lawrence M. Friedman & Stanton Wheeler, *The Evolution of State Supreme Courts*, 76 MICH. L. REV. 961, 998–1001 (1978).

### A. The Central Role of State Courts

State courts are open to the full range of disputes that arise in this country. State judicial systems are courts of “general jurisdiction,” which means they can hear questions of state and federal law. By contrast, federal courts are courts of “limited” jurisdiction, which means that they can only hear subjects assigned to them by the U.S. Constitution or federal statute.<sup>33</sup>

Americans are primarily concerned with matters such as finances, family, health, and safety. State courts have authority over these basic matters of daily life. If a tenant refuses to pay rent and her landlord threatens to evict her, a state court would hear the dispute. If divorced parents fight over the custody of a child, a state judge will resolve the matter. If a car accident leaves a passenger badly injured, the victim will likely go to state court to seek recovery. If a suspect is arrested for assault, a state judge will hold the arraignment and eventually preside over the trial (or more likely take the plea bargain). The work of courts in America is the work of *state* courts.

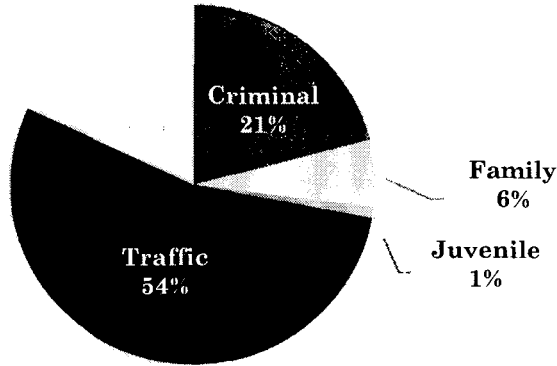
State courts handle more than 90% of the judicial business in America. According to the Court Statistics Project, a joint effort of the National Center for State Courts and the Conference of State Court Administrators, approximately eighty-six million cases were brought in American state trial courts in 2015.<sup>34</sup> In a single year, nearly one case was filed for every three people in the United States. Roughly one billion cases entered the state judicial system over the past decade. Figure 1 shows the total incoming cases by type in 2015.

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33. See U.S. CONST. art. III, § 2; see also ERWIN CHEMERINSKY, FEDERAL JURISDICTION 39–40 (7th ed. 2016).

34. Court Statistics Project, *Examining the Work of State Courts: An Overview of 2015 State Court Caseloads*, CONF. ST. CT. ADMINS. & NAT'L CTR. FOR ST. CTS. 3 (2016), <http://courtstatistics.org/~media/Microsites/Files/CSP/EWSC%202015.ashx> [https://perma.cc/7HZ2-9J3D].

FIGURE 1: TOTAL INCOMING CASES IN STATE COURTS,  
2015



The single largest category of state court cases is traffic violations, making up more than half of state courts' caseloads. Traffic violations are in many ways minor matters, requiring limited time and *relatively* few court resources. Nevertheless, they can have meaningful implications for individuals who face the possibility of fines and loss of their right to drive.<sup>35</sup> Family law and juvenile matters, both of which have obvious and profound effects on those involved, make up the smallest part of state court dockets. Traffic, domestic, and juvenile cases are usually heard by specialized courts, which hear only those types of cases.

The most significant part of state court dockets consists of criminal prosecutions and civil actions. Together, civil and criminal cases account for nearly all nontraffic cases in state court. Civil and criminal suits also are more likely to have effects beyond the parties to the case. Judicial decisions in civil and criminal cases interpret law, create precedent, and even make law. Civil lawsuits involve the distribution of resources and recognition of rights that can have both direct and indirect effects throughout the economy and society. Criminal prosecutions bring the power of the state to bear on individuals, acknowledge serious harms suffered by victims, punish wrongdoers, and deter future criminal behavior.

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35. See, e.g., Maura Ewing, *Should States Charge Low-Income Residents Less for Traffic Tickets?*, ATLANTIC (May 13, 2017), <https://www.theatlantic.com/politics/archive/2017/05/traffic-debt-california-brown/526491/> [<https://perma.cc/BJM5-95ES>] (presenting the argument that traffic ticket charges should vary based on income because of their disproportionate impact on low-income individuals).

*B. Interstate and Intrastate Variation in State Judicial Institutions*

Each state judicial system is unique, yet certain patterns emerge.<sup>36</sup> All states have a trial level and at least one appellate level. Trial courts include any court that handles cases when they are first filed. An appellate court reviews decisions of lower courts. Forty-five states have more than one type of trial court (a “divided” trial court structure): a trial court of general jurisdiction and one or more trial courts of limited jurisdiction. Specialized entry-level courts include family courts, juvenile courts, municipal courts, small claims courts, traffic courts, and other courts whose authority is similarly limited to a defined, narrow subject area. In those states, trial courts of general jurisdiction handle civil lawsuits (usually above a minimum-dollar amount threshold) and criminal prosecutions for felonies or other serious crimes. Six states use a single (or “unified”) trial court to handle all matters, although the unified court systems may handle the work through divisional sittings, which hear particular types of claims.<sup>37</sup>

State judicial systems handle review of lower courts in a number of ways. Two general features are common. First, every state has at least one appellate court of last resort—the final word on state law—which we will call a “supreme court” for ease of reference. Two states—Oklahoma and Texas—have two such courts, one for civil appeals and one for criminal appeals. Second, forty states, like the federal courts, have an intermediate appellate court situated between general jurisdiction trial courts and the high court(s).<sup>38</sup> An intermediate

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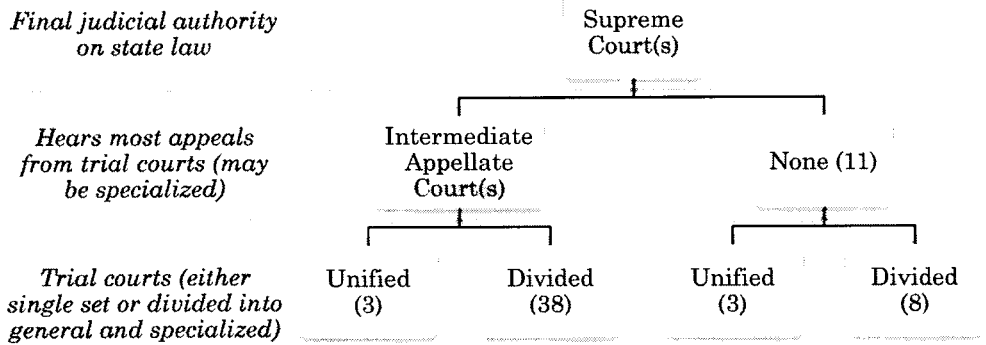
36. The descriptions and data in this Section are based on our original research into primary sources, including the individual court webpages for each state court. Similar data has been compiled in other sources as well. *See infra* note 42. We collected the data directly rather than relying on secondary sources in order to capture all of the nuances and idiosyncrasies present in each state’s system and to note when the structures and/or selection methods changed. We have simplified the structures for purposes of description here. But in later work we will rely on the variation in institutional design as part of an effort to explain the variation in composition and work of the courts.

37. A single set of trial courts (unified) are in place in California, the District of Columbia, Illinois, Maine, Minnesota, and Vermont. (We do not include probate courts as specialized entry-level courts for this purpose.)

38. The jurisdictions without intermediate appellate courts in 2014 were Delaware, the District of Columbia, Maine, Montana, Nevada, New Hampshire, Rhode Island, South Dakota, Vermont, West Virginia, and Wyoming. On November 4, 2014, Nevada citizens voted to amend the state constitution to create an intermediate appellate court that began hearing cases in January 2015 (after our dataset closed).

appellate court enables the state supreme court to hear fewer cases and to exercise discretion over those cases that it does hear.

FIGURE 2: STATE COURT STRUCTURES



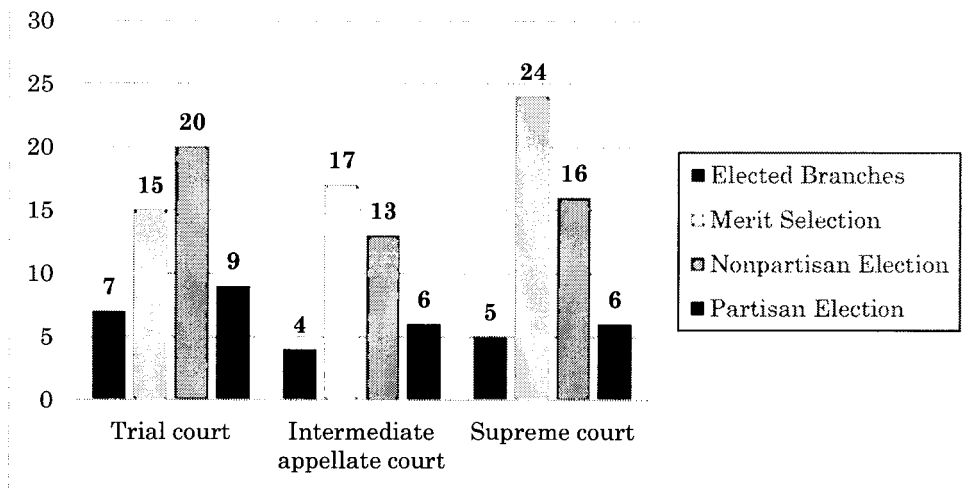
Each state has a distinct selection process for its judicial system. Many states use more than one method of selection. They may have an unusual pairing of selection method and retention method. Selection of trial court judges may vary by county.<sup>39</sup> The variation in judicial selection among and within states makes it difficult to talk about state courts collectively. By focusing on the most salient features of those selection systems, however, the states can be grouped into helpful categories.

A state judge may first gain a seat through election (nonpartisan or partisan), appointment by an elected branch (governor and/or legislature), or recommendation by a merit commission. The majority of states (forty-three) and the District of Columbia use the same method for selecting trial judges and appellate judges. All but two states use

39. The variation in selection of trial judges adds a wrinkle to the empirical study of the work of state courts. In order to allow easier comparison at the general level, we categorize a state's method of selecting trial judges based on the method used for most judges. Missouri, which is so strongly associated with the merit selection method that it is often called the "Missouri Plan," only uses merit nominating committees in certain counties. Five counties, Kansas City, and St. Louis have adopted the Missouri Plan. (Greene County, which encompasses the state's third largest city, adopted the plan as recently as 2008.) See *Nonpartisan Court Plan*, MO. CTS., <https://www.courts.mo.gov/page.jsp?id=297> (last visited Sept. 16, 2017) [<https://perma.cc/VB2C-7MWJ>]. Likewise, in neighboring Kansas, 17 of 31 districts use a merit selection process while the remaining 14 use partisan elections. See *Nominating Commissions*, KAN. JUD. BRANCH, <https://www.kscourts.org/appellate-clerk/nominating-commission/default.asp> (last visited Sept. 16, 2017) [<https://perma.cc/F2YV-8YC2>].

the same method for all appellate judges. Most states use elections to staff their trial courts. By contrast, the majority of state appellate courts are filled using some type of appointment process, which can involve a merit commission controlling the slate of nominees or allow the appointing body (either or both elected branches) to select anyone whom they choose.

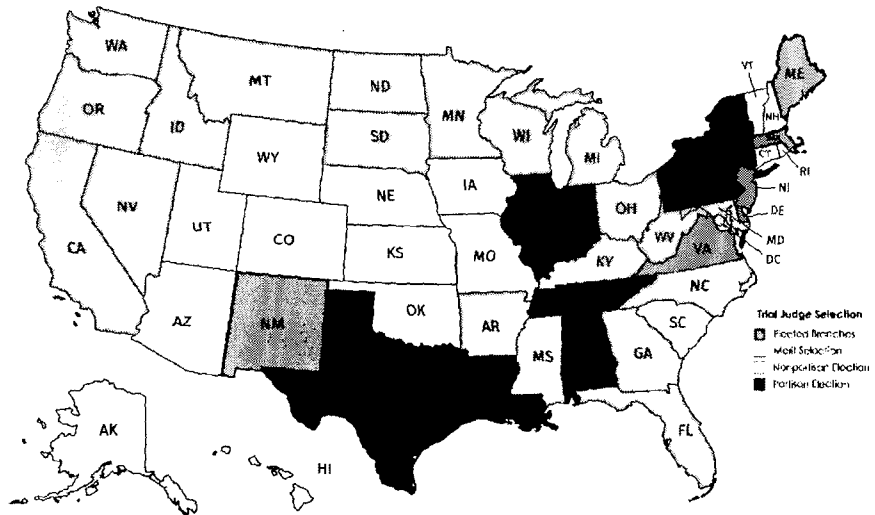
FIGURE 3: SELECTION METHOD BY COURT LEVEL



The maps in Figures 4 and 5 reveal some patterns in judicial selection method. The American heartland favors choosing judges through a merit process, while the North and the South generally favor election, either partisan or nonpartisan.<sup>40</sup> The Northeast and the West lack a clear pattern of selection. The key distinction between merit selection and election is citizen participation. The merit process usually requires that the governor, with or without consent of a legislature, pick from a panel of nominees. Election may require party nomination before a vote in a general election.

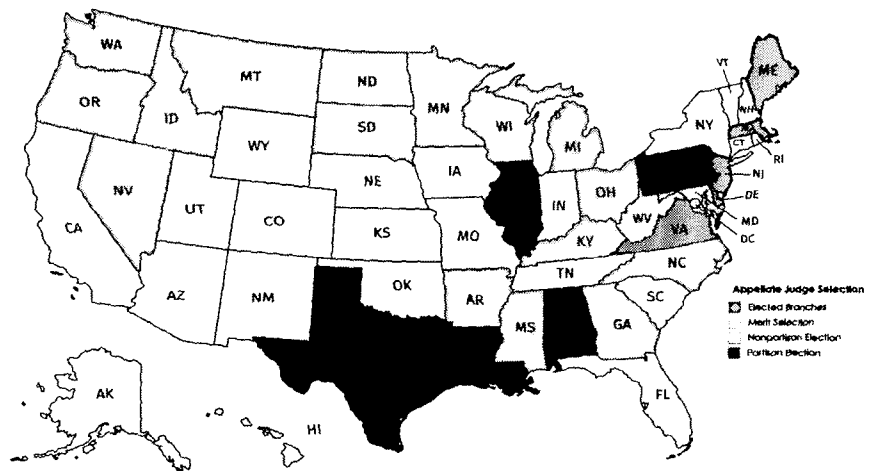
40. If a state uses a different method for selecting supreme court judges and intermediate appellate court judges, the appellate judge map reflects the state's method of selecting supreme court judges. The maps reflect the method used by the state in 2014. Several states have changed their methods of selection since 2014.

FIGURE 4: METHOD OF SELECTING STATE TRIAL COURT JUDGES



Created with mapcreator 8

FIGURE 5: METHOD OF SELECTING STATE APPELLATE COURT JUDGES



Created with mapcreator 8

Finally, nearly every American state judge has a limited term. Judicial terms can be as short as four years or as long as fifteen. Three states grant life tenure with a mandatory retirement age of seventy.

New Jersey grants life tenure if a judge is renewed after an initial seven-year term. Retention otherwise involves reappointment by an election official (or officials) or a commission, a retention election, or a competitive election.

The great power wielded by this diverse set of judicial institutions makes them an important subject of study. We can learn directly about these courts but also better understand adjudication generally as well as the role of the state and the nature of the law. But, to study state courts, we need access to essential data about them.

## II. DESIGNING A DEMOGRAPHIC STUDY OF STATE COURTS

Our study focuses on all appellate courts and general jurisdiction trial courts. General jurisdiction trial courts include all trial courts in unified systems and general jurisdiction courts in a divided system. We limit our study in this way for two reasons. First, all states have both of our selected types of courts, reflecting their centrality to judicial systems. Second, the unique aspects of specialized courts make comparisons across jurisdictions inapposite. We will refer to the trial courts in our study as “trial courts,” even though most bear another name, and their judges as “trial judges,” even though they often have a different name. Similarly, we will refer to judges on any appellate court as “appellate judges,” although they too go by a range of names. Finally, we refer to the highest court(s) in a state as the state supreme court(s).

We collected biographical data for every judge sitting on a state appellate court or a state trial court of general jurisdiction as of December 2014. Our dataset includes more than ten thousand judges. When constructing our dataset, we used only sources that had the hallmarks of credibility and reliability. The sources included state government webpages, press releases, and directories; professional association, practitioner, and university publications; academic journals; newspapers; judges’ official campaign websites; judicial and legal directories; and confidential telephone interviews with judges and lawyers. We used multiple sources to collect as complete a dataset as possible and to confirm the accuracy of biographical information that we found. We also used multiple methods to collect the information: data scraping, hand coding, and interviews.

The process of compiling the data was time intensive. Along with a team of six research assistants, we spent more than a year locating, coding, cleaning, and checking the data. We ran repeated reliability checks. We then sought to fill gaps by contacting practitioners and judges who might help.



The judge-centered database includes basic demographic variables. For each judge, we coded full name, title, court, city, education, gender, race/ethnicity, and age. With a few exceptions, we are not directly observing these characteristics of the judges but rather collecting it from secondary sources. Additionally, even after exhausting available sources, we are missing race and ethnicity data on roughly 5% of the judges, and we are missing age and education on a larger portion. We identified gender for nearly all the judges in the database. Our estimates are based on available data. Third, the database includes only judges who were listed as serving on a relevant state court in December 2014. If a state experienced significant turnover in its composition of judges since the end of 2014, our figures may contrast with the state's current judicial composition.

We computed the demographics of each state's population as a benchmark for our state court demographics. The U.S. Census Bureau collects annual population demographics. The product—the American Community Survey—provides data that can be used to compute demographic estimates for every state and region.<sup>41</sup> We drew on the American Community Survey to construct our benchmarks.

A truly representative judiciary would have the same ratio of women and minorities on the bench as it does in the general population. We calculate a “representativeness score” for every state. This score is the percentage of full representation achieved by the state. If a state is fully representative, its score will be 100% or 1.00.

Because we also want to focus on the shortfall for each state, we calculated the gap between the representation of women or minorities on the bench and the representation of each group in the general population. The “gavel gap” is how much the state falls short of that forecast. We calculate the gavel gap by dividing the difference between the proportion of women (or minorities) on the bench and women (or minorities) in the general population by the proportion of women (or minorities) in the general population. The formula for women would be  $((\text{fraction of judges who are women} - \text{fraction of general population who are women}) / \text{fraction of general population who are women})$ . Thus, if half of a state's judges were women and half of its general population were women, the state would have no gap  $((.50 - .50) / .50 = 0)$ . If 10% of a state's judges were women and half of its general population were women, the state would have a gap of  $-.80 ((.10 - .50) / .50 = -.80)$ . That is, the state has 80% fewer women on the bench than we would have

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41. *American Community Survey*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/acs/> (last visited Sept. 16, 2017) [<https://perma.cc/J5J4-HVQF>].

predicted based on its general population. Stated differently, the state has only 20% of the number of women on the bench as we would expect.

### III. THE RESULTS

The State Bench Judicial Database reveals a number of noteworthy trends.<sup>42</sup> First, state benches are overwhelmingly white, but a few states have achieved diversity on the bench consistent with the diversity of their populations. Second, men are overrepresented on state courts, and no state has achieved gender parity in its courts. Third, and not surprisingly given the first two trends, white men cast a long shadow over state courts. Fourth, the gap exists at every level of the judiciary.

#### *A. Trend 1: State judges are overwhelmingly white.*

People of color make up roughly four in ten people in the country but fewer than two in ten judges; and, in sixteen states, judges of color account for fewer than one in ten state judges. The story of racial diversity in state courts is one of sharp contrasts. In the five states with the best representation, minorities are represented at roughly the same rate or higher on state courts as they are in the general population (representativeness score in parentheses): Montana (.54), South Dakota (.41), West Virginia (.13), Hawaii (.03), and Wyoming (-.03). But, in the five states with the worst representation, minorities appear to be nearly absent from the judiciary: Alaska (-.95), Maine (-1.0), New Hampshire (-1.0), North Dakota (-1.0), and Vermont (-1.0).

TABLE 1: RACE/ETHNICITY BREAKDOWN OF ALL STATE COURTS  
(2014)

	Percentage White Non- Hispanic	Percentage African American	Percentage Hispanic	Percentage Other Race
All State Court Judges	.8036	.0722	.0544	.0698
U.S. Population	.6172	.1238	.1766	.0824

The racial and ethnic representativeness of state courts data reveals a fairly flat distribution for ethnic representation on state

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42. The full database and rankings of the states are available at THE GAVEL GAP, <http://gavelgap.org/> (last visited Sept. 19, 2017) [<https://perma.cc/G3FU-UMZN>].

courts. In a near majority of states (twenty-four), minority judges fell below 50% of proportional representation of the general population. This greater than .50 gap occurred in states with large minority populations as well as those with small ones. In California and Texas, for example, we would expect a large number of judges of color given the number of people of color in each state: 62% of Californians and 56% of Texans. But, we find instead that 26% of California judges and Texas judges are people of color. In Iowa, we expect a small fraction of judges to be people of color (13%), but the Iowa judiciary still comes in below that forecasted percentage with only 6%.

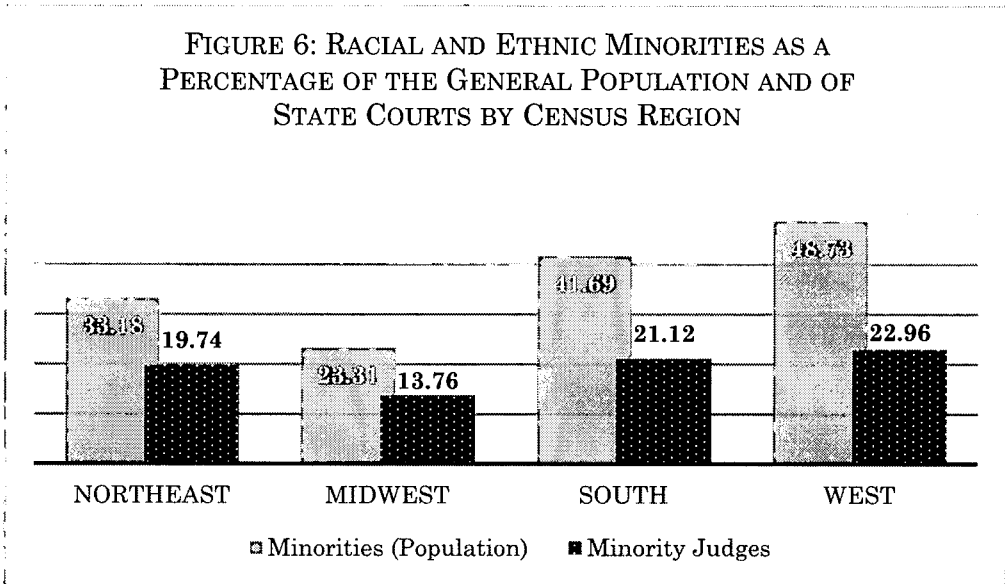
We can better understand the racial and ethnic gap between who lives in the United States and who sits in judgment by focusing on different regions of the country. The U.S. Census divides the country into four regions: Northeast, Midwest, South, and West. We use those regions as they allow comparison to other data collected on a regional basis.

TABLE 2: POPULATION BY CENSUS REGIONS IN THE UNITED STATES		
REGION <i>States in region</i>	Population	Percentage of U.S. Population
NORTHEAST <i>Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont</i>	56,283,891	17.5%
MIDWEST <i>Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin</i>	67,907,403	21.1%
SOUTH <i>Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia</i>	121,182,847	37.7%
WEST <i>Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming</i>	76,044,679	23.7%

We find meaningful regional effects for race and ethnicity of judges. The South and the West, which have higher numbers of racial and ethnic minorities than the Northeast and Midwest, do not have

comparably higher numbers of minority judges.<sup>43</sup> In fact, white, non-Hispanics in the general population outnumber white, non-Hispanic judges by about two to one in the South and West. The Midwest and Northeast have a smaller gap. Racial and ethnic minorities were just over 23% of the population in the Midwest in 2014 and almost 14% of the judges.

FIGURE 6: RACIAL AND ETHNIC MINORITIES AS A PERCENTAGE OF THE GENERAL POPULATION AND OF STATE COURTS BY CENSUS REGION



*B. Trend 2: Women are underrepresented on state courts.*

Women have entered law schools and the legal profession in large numbers for the last forty years, but are underrepresented on state courts. Women comprise roughly one-half of the U.S. population and one-half of U.S. law students. But, less than one-third of state judges are women. In some states, women are underrepresented on the bench by a ratio of one woman on the bench for every three or four women in the state.

43. *ACS Demographic and Housing Estimates: 2011-2015 American Community Survey 5-Year Estimates*, U.S. CENSUS BUREAU, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited Sept. 16, 2017) [<https://perma.cc/C4LH-BMJF>] (select "Add/Remove Geographies" and choose "State" from the drop-down list).

	Percentage Male	Percentage Female	Total Number
All State Court Judges	.6978	.3022	10,295
U.S. Population	.4927	.5073	321,000,000

Not a single state has women on the bench in the numbers commensurate with their representation in the general population. In many states, men are overrepresented by a factor of two to one. That is, for nearly half of the states, women comprise fewer than one-half of the forecasted number of state judges. For example, Mississippi has a majority female population, but less than 18% of its state judges are women. New England states generally exhibit higher proportional representation than elsewhere, although individual states in other regions—e.g., Nevada, where women comprise 50% of the general population and 41% of state judges, and Oregon, where women comprise 51% of the general population and 44% of state judges—rank relatively high. Not a single state has as many women judges as it does men.

	Female Judges as a Percentage of All Judges	Women as Percentage of Population	Gavel Gap
Northeast	.3192	.5129	<b>-0.3777</b>
Midwest	.2825	.5071	<b>-0.4429</b>
South	.2809	.5097	<b>-0.4489</b>
West	.3293	.5016	<b>-0.3435</b>

The very low gender representativeness scores demonstrate that the steady gender balance in law schools has yet to translate to equality on state courts. Women have been attending law school in large numbers for the past forty years. In 1985, the percentage of first year law students who were women crossed the 40% threshold and has been around 50% since 1996.<sup>44</sup> Nevertheless, no state has women on the bench in the numbers commensurate with their representation in the general population.

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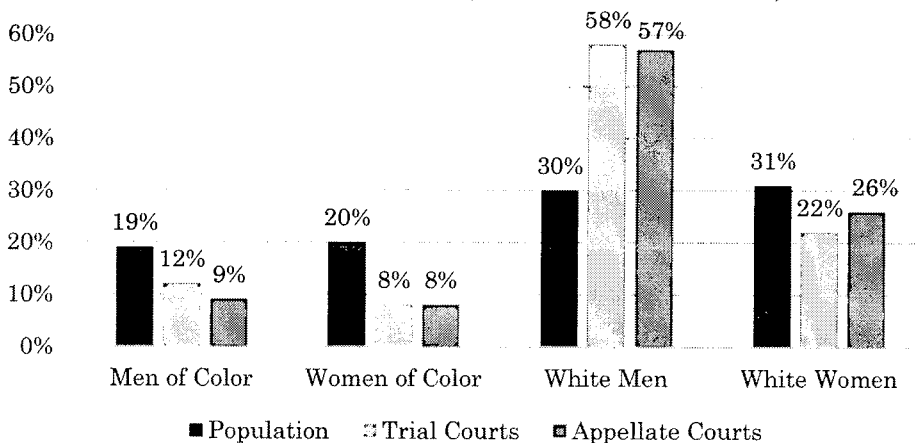
44. *First Year and Total J.D. Enrollment by Gender 1947-2011*, A.B.A., [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/jd\\_enrollment\\_1yr\\_total\\_gender.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf) (last visited Sept. 16, 2017) [<https://perma.cc/4S5Q-WGSR>].

Many of the states that fared poorly on the gender score also performed poorly on ethnic representation. For example, Oklahoma ranks forty-first out of fifty-one on the gender score (with 50% female population but only 21% women judges), and forty-sixth out of fifty-one on the race and ethnic minority representation score (with 33% minority population but only 8% minority judges).

*C. Trend 3: White men dominate state courts.*

White men fill state judgeships at nearly twice their numbers in the population. More than half of state trial judges and state appellate judges are white men according to the State Bench Database figures: 57% of trial judges and 58% of state appellate judges are white men. According to 2014 census figures, however, white men make up only 30% of the population. Women of color are the most underrepresented group. Women of color are 20% of the population but only 8% of the bench; that is, only 40% of their relative numbers in the general population.

FIGURE 7: RACE AND GENDER IN THE POPULATION AND ON THE STATE BENCH (TRIAL AND APPELLATE)



*D. Trend 4: Gender and racial disparity are significant on trial and appellate courts.*

We find a number of significant structural differences between state trial and state appellate courts, but we find a comparable gavel gap on both. White men account for roughly equal numbers of trial and

appellate judges on the state bench. Women make up a slightly larger percentage of appellate judges, and all of this gain is from larger numbers of white women serving as appellate judges.

TABLE 5: RACE AND GENDER BREAKDOWN OF ALL STATE COURTS  
(2014)

	Percentage White Men	Percentage Men of Color	Percentage White Women	Percentage Women of Color
State Appellate Judges	.5705	.0954	.2565	.0776
State Trial Judges	.5804	.1237	.2186	.0773
All State Court Judges	.5787	.1191	.2249	.0773
U.S. Population	.3041	.1886	.3131	.1942

#### IMPLICATIONS AND CONCLUSION

We find that America's judges are overwhelming white and male. The State Bench Database findings have a number of important implications worthy of further discussion and future exploration.

First, our courts must be representative to fulfill their purposes. Our laws are premised in part on the idea that our courts will be staffed by judges who can understand the circumstances of the communities that they serve.<sup>45</sup> Our judicial system depends on the general public's faith in its legitimacy.<sup>46</sup> Both of these foundational principles require a bench that is representative of the people whom the courts serve.<sup>47</sup> The intuition here is that because judges inevitably draw upon their own experiences when deciding cases, the judiciary benefits when their experiences draw upon a broader set of the population. Empirical research has shown that social background, including race, ethnicity, and gender, have measurable individual and group effects on judges.<sup>48</sup>

45. For a discussion of the challenges of judicial representativeness, see Jennifer A. Segal, *Representative Decision Making on the Federal Bench: Clinton's District Court Appointees*, 53 POL. RES. Q. 137 (2000).

46. See HAIRE & MOYER, *supra* note 16 (discussing the impact of judicial diversity on perceptions of the legitimacy of courts).

47. See Joy Milligan, *Pluralism in America: Why Judicial Diversity Improves Legal Decisions About Political Morality*, 81 N.Y.U. L. REV. 1206, 1209–10 (arguing that increasing the judiciary's representativeness in terms of gender and ethnicity will enable the court to more effectively account for competing viewpoints when making decisions).

48. See, e.g., Adam N. Glynn & Maya Sen, *Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Women's Issues?*, 59 AM. J. POL. SCI. 37, 45 (2015) (finding that judges with daughters consistently vote in a more feminist fashion on gender issues than

Second, we need a better process for developing a pipeline of women and minorities to serve as judges.<sup>49</sup> The question of the supply of women and minorities to serve as judges is one of labor economics. The bench should not reflect the bar but rather the public. However, the courts are staffed by lawyers, and thus the availability of qualified candidates is a limitation on the ability of states to fill the seats. While the number of judges is small relative to the number of lawyers, it still requires a meaningfully large pool of candidates. Corporations may provide guidance on this matter, given their efforts to improve gender and ethnic diversity on their boards of directors, notwithstanding an underrepresentation of female and minority applicants.<sup>50</sup>

Third, judicial selection affects who serves. We need to understand how selection systems explain the variation that we observe between and across states. Does merit selection, election, and/or appointment produce a more representative and balanced bench, controlling for other possible explanations? And, if a specific method of selection is less effective at achieving parity, what accounts for that difference? Does campaign finance play a role in election states? Does the size of the electoral region (district or statewide) affect outcomes? Judicial selection in state courts remains underexplored, with some arguing that efforts at nonpartisan selection may not improve judicial decisionmaking.<sup>51</sup> The challenge here is that the question is somewhat

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judges who do not have daughters); Susan Welch, Michael Combs & John Gruhl, *Do Black Judges Make A Difference?*, 32 AM. J. POL. SCI. 126, 131–32 (1988) (finding that the presence of black judges increases equality of treatment between black and white defendants regarding the decision of whether to incarcerate).

49. For studies exploring the significance of pipeline issues to judicial diversity, see LINDA MEROLA & JON GOULD, *Improving Diversity on the State Courts: A Report from the Bench*, CTR. FOR JUST. L. & SOC'Y GEO. MASON U. (2009), [http://www.justiceatstake.org/media/cms/DiversityReport2009\\_4F739E0E55910.pdf](http://www.justiceatstake.org/media/cms/DiversityReport2009_4F739E0E55910.pdf) [<https://perma.cc/RS6Y-7FFR>]; CIARA TORRES-SPELLISCY, MONIQUE CHASE & EMMA GREENMAN, BRENNAN CTR. FOR JUSTICE, *IMPROVING JUDICIAL DIVERSITY* (2d ed. 2010), [http://www.brennancenter.org/sites/default/files/legacy/Improving\\_Judicial\\_Diversity\\_2010.pdf](http://www.brennancenter.org/sites/default/files/legacy/Improving_Judicial_Diversity_2010.pdf) [<https://perma.cc/W8Q6-B7UC>]; Malia Reddick, Michael J. Nelson & Rachel Paine Caufield, *Racial and Gender Diversity on State Courts: An AJS Study*, JUDGES' J., Summer 2009, at 28, [http://www.judicialselection.us/uploads/documents/Racial\\_and\\_Gender\\_Diversity\\_on\\_Stat\\_8F60B84D96CC2.pdf](http://www.judicialselection.us/uploads/documents/Racial_and_Gender_Diversity_on_Stat_8F60B84D96CC2.pdf) [<https://perma.cc/MBU6-5Y6U>].

50. Early evidence suggests that increasing diversity on corporate boards benefits the firm. See, e.g., Toyah Miller & Maria del Carmen Triana, *Demographic Diversity in the Boardroom: Mediators of the Board Diversity–Firm Performance Relationship*, 46 J. MGMT. STUD. 755, 775 (2009) (noting improvement in firm innovation and reputation); Tuan Nguyen, *Do Female Directors Add Value?*, 13 ECONOMICA 169, 176 (2017) (noting improvements in firm performance).

51. See, e.g., CHRIS W. BONNEAU & MELINDA GANN HALL, *IN DEFENSE OF JUDICIAL ELECTIONS* (2009) (arguing that nonpartisan, “objective,” judicial appointments fail to increase the quality or diversity of judges); Melinda Gann Hall, *State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform*, 95 AM. POL. SCI. REV. 315, 326 (2001) (contending that critics of partisan judicial elections “underestimate the extent to which partisan elections have a



overidentified: judicial selection affects who serves, but so too does the pool of eligible lawyers (i.e., the pipeline).

Fourth, criminal justice reform has drawn increasing attention from the left and right. One of the most important aspects of the criminal justice system is the trial judges who monitor representation and who interpret and enforce the laws. Trial judges are overwhelmingly white. But, criminal defendants are disproportionately nonwhite. The Bureau of Justice Statistics estimated that in 2009 in the seventy-five largest counties, nearly half (44%) of felony defendants were non-Hispanic African Americans and nearly one-quarter (24%) were Hispanic/Latino.<sup>52</sup> We estimate that more than three-quarters of trial judges are white. As recently as May 2016, the U.S. Supreme Court has found unconstitutional jury-selection practices that produce an all-white jury.<sup>53</sup> Yet, the reality is that minority defendants face a nearly all-white trial bench in many states.

The state court demographic data not only leads to important questions like these, but the data also can be used as part of efforts to answer questions about the work of courts. We typically control for demographic characteristics of decisionmakers when studying their work. The data makes it possible to introduce those same controls in the study of state courts.

State judges are public officials who play a vital role in our democracy, our economy, and our daily lives. This makes it of great importance that we understand who they are and what they do. The current project hopes to contribute to that effort.

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tangible substantive component and overestimate the extent to which nonpartisan and retention races are insulated from partisan politics and other contextual forces”).

52. BRIAN A. REAVES, U.S. DEPT OF JUSTICE, NCJ 243777, FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 2009 - STATISTICAL TABLES 7 tbl.5 (2013), <http://www.bjs.gov/content/pub/pdf/fdluc09.pdf> [<https://perma.cc/QEK2-USA3>].

53. *Foster v. Chatman*, 136 S. Ct. 1737 (2016).